IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shanti Raj Singhvi v. State of Rajasthan & Anr.

S.B.CIVIL WRIT PETITION NO.1987/1993
under Article 226 of the Constitution of India.

Date of Order : 9th September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi,]
Mr. Girish Joshi] for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

By this petition for writ a direction is sought by the petitioner for respondent State of Rajasthan to determine the vacancies in terms of Rule 9 of the Rajasthan Commercial Taxes Service Rules, 1971 (hereinafter referred to as “the Rules of 1971”) with regard to post of Assistant Commercial Taxes Officers and further to make promotions on the post referred above in accordance with the Rules. The petitioner has also given challenge to the promotions

made on the post of Assistant Commercial Taxes Officer under the Orders dated 24.4.1991 (Anx.5) and 27.7.1991 (Anx.6) by adhering merit as a criteria for promotion.

The facts necessary for adjudication of present writ petition are as follows:-

The petitioner entered in services of Government of Rajasthan being appointed as Commercial Taxes Inspector Gr.III on 2.1.1978. A promotion was given to the petitioner as Assistant Commercial Taxes Officer on adhoc basis under an order dated 14.10.1987. The respondents by orders impugned dated 24.4.1991 and 27.7.1991 made promotions from amongst the Commercial Taxes Inspectors to the post of Assistant Commercial Taxes Officers under the recommendations of a departmental promotion committee constituted under Rule 17(2)(a) of the Rules of 1971. The allegation of the petitioner is that by orders referred above the respondents accorded promotions to M/s Surendra Singh Shekhawat, Ashok Agarwal, Raviram Gupta, Manohar Singh Rathore, Manu Chotwani, Vinod Kumar Sharma, Ved Prakash Mathur, Premnath Bhaya and Ramchandra Jhanwar who happens to be junior to him in the cadre of Commercial Taxes Inspectors. It is contended by the petitioner that promotion to the above named persons had been given on basis of merit criteria though the Rules provides only the criteria of seniority-cum-merit to be adhered while making

promotions to the post of Assistant Commercial Taxes Officers.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the promotions vide the orders dated 24.4.1991 and 27.7.1991 were made after determining yearwise vacancies as provided under Rule 9 of the Rules of 1971. A specific averment is made in reply to the writ petition that yearwise vacancies as required under Rule 9 of the Rules of 1971 were determined and the ratio for appointment on the post of Assistant Commercial Taxes Officer has been maintained. The respondents also stated in reply that the Rules of 1971 prescribes that promotion to the post of Assistant Commercial Taxes Officer is required to be made on basis of criteria of seniority-cum-merit and merit in the ratio of 1:1, as such no illegality was made by making promotions by adhering the criteria of merit.

Heard counsel for the parties.

In view of specific statement of respondents that the promotions were accorded upto the vacancy year 1992-93 by determining the vacancies in accordance with Rule 9 of the Rules of 1971, the relief claimed by the petitioner with regard to determination of vacancies has become infructuous. It

is also pertinent to note that the petitioner himself has been promoted to the post of Assistant Commercial Taxes Officer against the vacancies of the year 1992-93 by order dated 31.8.1992 and prior to it no person junior to him was promoted as Assistant Commercial Taxes Officer under the criteria of seniority-cum-merit.

The grievance of the petitioner with regard to promotions made under the orders dated 24.4.1991 and 27.7.1991 on basis of criteria of merit is having no foundation, as the Rules of 1971 specifically provides that while making promotion in regular line from the post not included in service to the lowest post or category of post in service shall be made strictly on basis of merit and on basis of seniority-cum-merit in proportion of 50:50. The post of Commercial Taxes Officer, the post the petitioner was originally holding, is part of Rajasthan Commercial Taxes Subordinate Service, a service created under Rajasthan Subordinate Service Rules, 1975. The post of Assistant Commercial Taxes Officer is a post prescribed under Rajasthan Commercial Taxes Service Rules, 1971. An avenue of promotion is available to Commercial Taxes Inspectors to the post of Assistant Commercial Taxes Officers under the Rules of 1971. The promotion from the post of Commercial Taxes Inspector to the post of Assistant Commercial Taxes Officer is not only a promotion but is also a change of service

i.e. from Rajasthan Commercial Taxes Subordinate Service to the Rajasthan Commercial Taxes Service. For these promotions criteria, eligibility and procedure is prescribed under Rule 18 of the Rules of 1971. Sub-rule(4) of Rule 18 of the Rules of 1971 is relevant to adopt the criteria while making such promotions. Sub-rule(4) of Rule 18 of the Rules of 1971 referred above reads as under:-

> "18(4)Selection for promotion in the regular line of promotion from the post/posts not included in Service to the lowest post or category of post in the Service shall be made strictly on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50."

From perusal of sub-rule(4) of Rule 18 of the Rules of 1971 it is apparent that the criteria of merit is required to be adhered while making promotions to the post of Assistant Commercial Taxes Officer. It appears that abovementioned provisions escaped from sight of the petitioner while raising contention that the Rules of 1971 does not provide the criteria of merit for making promotion to the post of Assistant Commercial Taxes Officer. In view of it the respondents have not committed any illegality or error while making promotions to the post of Assistant Commercial Taxes Officer by adopting the criteria of merit.

Accordingly this petition for writ fails and, therefore, the same is hereby dismissed.

(GOVIND MATHUR),J.

kkm/ps.